

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED *WJ*
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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

ERIC ROBERT RUDOLPH,

Defendant.

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CR00-S-422-S

WAIVER OF PERSONAL APPEARANCE AT ARRAIGNMENT
AND PLEA OF NOT GUILTY

COMES NOW defendant Eric Robert Rudolph and moves this Court to accept his waiver of personal appearance at arraignment and to enter his plea of not guilty to the superceding indictment returned on June 26, 2003. In support thereof, defendant states as follows:

1. On June 3, 2003, Defendant was arraigned in open court on the original indictment in this case which was returned on November 15, 2000.
2. On June 16, 2003, Defendant waived a detention hearing in the presence of and after direct questioning by Chief Magistrate Judge T. Michael Puttman.
3. The superceding indictment charges defendant with the identical two offenses contained in the original indictment but includes a "notice of special findings."
4. Defendant is aware and has been informed by his counsel that the prosecution is seeking permission to seek the death penalty in this case. Without waiving any legal objection to the superceding indictment, Defendant is aware that the superceding indictment is the legal instrument through which the prosecution will seek the death penalty.

5. Defendant has been informed of his right to an arraignment on the superceding indictment.

6. Defendant has read and understands the charges contained in the superceding indictment.

7. Defendant has been provided a copy of the superceding indictment.

8. Defendant has discussed the matter of this waiver with his defense counsel.

9. Defendant has determined that it is in his best interest that he waive any personal appearance at an arraignment on the superceding indictment.

10. It is defendant's opinion that he will not be prejudiced by such a waiver of personal appearance.

11. Defendant, having read this motion in its entirety, makes this waiver intelligently, knowingly, and voluntarily without any promise of reward or threat of coercion having been made.

12. The undersigned counsel hereby state that the above allegations are true and accurate. Considering these and other circumstances present in this case, it is our professional opinion that it is in defendant's best interest that he waive his personal appearance at the arraignment on the superceding indictment.

13. Waiver of personal appearance at arraignment is authorized by Rule 10, Federal Rules of Criminal Procedure, which provides as follows:

“(a) In General. An arraignment must be conducted in open court and must consist of: (1) ensuring that the defendant has a copy of the indictment or information; (2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then (3) asking the defendant to plead to the indictment or information.

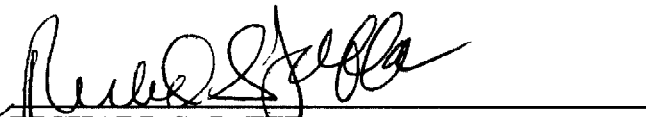
“(b) Waiving Appearance. A defendant need not be present for the arraignment if:

- (1) the defendant has been charged by indictment or misdemeanor information;**
- (2) the defendant, in a written waiver signed by both the defendant and defense counsel, has waived appearance and has affirmed that the defendant received a copy of the indictment or information and that the plea is not guilty; and**
- (3) the court accepts the waiver.”**

FOR THESE REASONS, the undersigned hereby request this Court to accept defendant’s waiver of his right to personally appear at an arraignment on the superceding indictment and to enter defendant’s plea of not guilty.

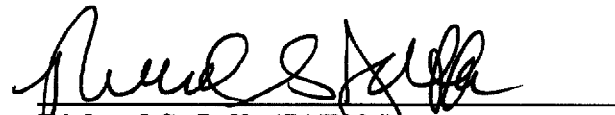

ERIC ROBERT RUDOLPH
Defendant

DATE: July 2, 2003.


RICHARD S. JAFFE
Attorney for Eric Robert Rudolph


WILLIAM M. BOWEN, JR.
Attorney for Eric Robert Rudolph

RESPECTFULLY SUBMITTED,


Richard S. Jaffe (JAF004)

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ATTORNEYS FOR DEFENDANT
ERIC ROBERT RUDOLPH

CERTIFICATE OF SERVICE

I hereby certify that on this the 2 day of July, 2003, a copy of the foregoing was served upon the following by facsimile and by placing a copy of same in the United States mail, postage prepaid and properly addressed:

Michael W. Whisonant
Robert J. McLean
Will Chambers
Assistants United States Attorney
U. S. Department of Justice
Office of United States Attorney
Northern District of Alabama
1801 Fourth Avenue North
Birmingham, Alabama 35203-2101
Facsimile: (205) 244-2183

Michael W. Whisonant
OF COUNSEL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	CR00-S-422-S
)	
ERIC ROBERT RUDOLPH,)	
)	
Defendant.)	

**ORDER
on
Waiver of Personal Appearance at Arraignment**

Defendant Eric Robert Rudolph has filed a motion requesting this Court to accept his waiver of personal appearance at the arraignment on the superceding indictment returned on June 26, 2003, and to enter his plea of not guilty. The requested waiver is signed by defendant and both defense counsel. This Court is of the opinion that this motion is due to be granted for the following reasons.

On June 3, 2003, Defendant was arraigned in open court on the original indictment in this case. On June 16, 2003, Defendant entered a personal waiver of a detention hearing. On both of those occasions, this Court observed defendant's demeanor and questioned defendant.

The superceding indictment charges defendant with the identical two offenses contained in the original indictment but also includes a "notice of special findings" not contained in the original. Defendant has received a copy of the superceding indictment. Defendant is aware and has been informed by his counsel that the prosecution is requesting permission to seek the death penalty in this case. Defendant is aware that the superceding indictment is the legal instrument through which the prosecution will seek the death penalty.

Defendant has been informed of his right to an arraignment on the superceding indictment. Defendant has made his decision of waiver after discussion with his defense counsel and all agree that this waiver is in defendant's best interest.

This Court is convinced that defendant makes this waiver intelligently, knowingly, and voluntarily without any promise of reward or threat of coercion having been made. Furthermore, this Court is of the opinion that neither the government nor the defendant will not be prejudiced by a waiver of defendant's personal appearance.

Waiver of arraignment is specifically authorized by Rule 10(b), Federal Rules of Criminal Procedure (as amended, December 1, 2002). The requirements of that rule have been satisfied in this case.

Therefore, it is the ORDER of this Court that defendant's motion is GRANTED and a plea of NOT GUILTY is entered to the superceding indictment. The arraignment previously scheduled for July9, 2003, is hereby CANCELLED.

The Clerk is DIRECTED to forward a copy of this order to all counsel of record.

DONE this the _____ day of July, 2003.

**T. MICHAEL PUTNAM
CHIEF MAGISTRATE JUDGE**